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Western Baptist College d/b/a Corban
University, William Jessup University
and Phoenix Seminary*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Eugene Division

ELIZABETH HUNTER, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION,
et al.,

Defendants,

No. 6:21-CV-00474-AA

DEFENDANTS-INTERVENORS'
NOTICE OF SUPPLEMENTAL
AUTHORITY

v.

COUNCIL FOR CHRISTIAN
COLLEGES & UNIVERSITIES,
WESTERN BAPTIST COLLEGE d/b/a
CORBAN UNIVERSITY, WILLIAM
JESSUP UNIVERSITY, AND
PHOENIX SEMINARY,

Defendants-Intervenors.

Defendant-Intervenors Corban University (“Corban”), William Jessup University (“Jessup”), Phoenix Seminary, and the Council for Christian Colleges & Universities (“CCCU”) provide notice of supplemental authority from the United States Court of Appeals for the Ninth Circuit, *Maxon v. Seminary*, No 20-56156, issued on December 13, 2021. The opinion is attached to this Notice as Exhibit A.

Maxon involved two students—Joanna Maxon and Nathan Brittsan, both of whom are plaintiffs from *this* case and represented by the same Plaintiffs’ counsel—who were expelled from Fuller Theological Seminary for violation of the school’s faith-based policies against same-sex marriage and extramarital sexual activity. *Maxon v. Seminary*, 2020 WL 6305460, at *1 (C.D. Cal. Oct. 7, 2020). The plaintiffs sued the seminary, alleging that the school violated Title IX by engaging in discrimination on the basis of sexual orientation and gender. *Id.* *4–*5. The United States District Court for the Central District of California dismissed the plaintiffs’ complaint, holding that the seminary was entitled to invoke the Title IX religious exemption. *Id.* *9.

The Ninth Circuit affirmed, making two points that are relevant here. First, the Ninth Circuit held that Title IX does not require a school to provide written notice or obtain an assurance of exemption from the Department of Education before invoking the religious exemption. *Maxon*, 20-56256 at 5–7. Second, while the religious exemption only applies to educational institutions that are “controlled by a religious organization,” 20 U.S.C. § 1681(a)(3), the Ninth Circuit held that the controlling organization need not be a distinct, external organization, but could include a school’s

own religiously affiliated board of trustees. *Maxon*, 20-56256 at 2–3. On each of these points, the Ninth Circuit noted that the Department’s current regulations—which reflect the 2020 amendments that Plaintiffs challenge here—are consistent with Title IX’s statutory text and with the Department’s longstanding practice. *Id.* at 3, 6.

This opinion was not selected for publication, but it constitutes highly persuasive authority that supports the Intervenor’s Joint Motion to Dismiss (ECF No. 137) and Joint Opposition to Plaintiffs’ Motion for Preliminary Injunction (ECF No. 109).

Respectfully submitted.

DATED this 14th day of December, 2021.

/s/ Gene C. Schaerr

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document was served on all counsel of record in this case by ECF.

DATED this 14th day of December, 2021.

/s/ Mark A. Lippelmann

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